

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP MORRIS INC., et al.,

Defendants.

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Civil Action No. 99-CV-02496 (GHEAM)

Next Scheduled Court Appearance:
July 19, 2002

TOBACCO LITIGATION

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**RESPONSE OF BROWN & WILLIAMSON TOBACCO CORPORATION TO THE
UNITED STATES' FIRST SET OF REQUESTS FOR ADMISSION TO ALL
DEFENDANTS**

Pursuant to the Ninth Case Management Order dated March 26, 2001 ("CMO9"), Defendant Brown & Williamson Tobacco Corporation, individually and as successor by merger to The American Tobacco Company ("Brown & Williamson"), responds and objects to the Plaintiff United States of America's ("Plaintiff") First Set of Requests for Admissions to All Defendants (the "Requests").

RECURRING OBJECTIONS

Privileged and Otherwise Protected Documents

1. Brown & Williamson objects to these Requests on the grounds that they seek the disclosure of documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the joint defense privilege, the common interest privilege, or any other applicable privilege, exemption, or immunity. Inadvertent disclosure of any documents or information shall not be a waiver of any claim of privilege, work product protection, or any other exemption.

in-house biological research, and that Brown & Williamson continues to participate in in-house biological research programs.

Brown & Williamson denies this Request.

REQUEST TO ADMIT NO. 207:

Admit that, during the 1970s, persons employed by you discussed the palladium cigarette with persons employed by Liggett.

RESPONSE TO REQUEST TO ADMIT NO. 207:

Brown & Williamson incorporates Recurring Objections Numbers 1, 2, and 8 in response to this Request. Brown & Williamson specifically objects to this Request on the grounds that the term "discussed" is vague, ambiguous, overly broad, and unduly burdensome.

Subject to and without waiving its Recurring and Specific Objections, Brown & Williamson states that, because of the large numbers of people who worked for Brown & Williamson and The American Tobacco Company in the 1970's, it is without sufficient information to admit or deny this Request. However, Brown & Williamson states that it is not aware of any such contacts based on the information it currently has in its possession.

REQUEST TO ADMIT NO. 218:

Admit that environmental tobacco smoke ("ETS") causes disease in some people.

RESPONSE TO REQUEST TO ADMIT NO. 218:

Brown & Williamson incorporates Recurring Objections Numbers 7, 9, and 11 in response to this Request.

Subject to and without waiving its Recurring Objections, Brown & Williamson states that it recognizes that smoking can be annoying and irritating to nonsmokers, and is committed to the development of practical ventilation-based solutions that will reduce this annoyance. However, Brown & Williamson does not believe that the scientific evidence, taken as a whole, is sufficient

to establish that environmental tobacco smoke (ETS) is a cause of disease.

Most of the evidence investigating whether there is an increased risk of disease associated with exposure to ETS is based on epidemiological studies. The majority of studies on ETS and lung cancer and heart disease have not reported overall statistically significant increases in risk.

In those studies which have reported a statistically significant association between exposure to ETS and lung cancer and heart disease, the reported risks are sufficiently low that they cannot be assumed to be reliable by normal scientific standards in judging epidemiological studies.

The area in which the epidemiological studies do consistently report a statistically significant, albeit small, association is for those that report an increase in respiratory symptoms and illnesses in the very young children of parents who smoke compared to those whose parents do not smoke. It is not clear whether these associations are a result of exposure to tobacco smoke in the air, or a result of the many other reported differences between smoking and nonsmoking households.

Unlike the results for younger children, however, the increased incidence of respiratory symptoms and illnesses is not consistently reported in studies of older children. In these studies it has not been consistently possible to medically distinguish between the children of smokers and children of nonsmokers at the age of three and above.

In spite of the uncertainty about whether the effects reported in young children represent a real effect of exposure to ETS, Brown & Williamson believes that parents should not smoke around young children.

Except as specifically admitted, Brown & Williamson denies this Request.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action
)	No. 99-2496 (GK)
v.)	
)	
PHILIP MORRIS INCORPORATED,)	
et al.,)	
)	
Defendants.)	

**RESPONSE OF BROWN & WILLIAMSON TO PLAINTIFF'S SPECIFIC
INTERROGATORIES TO DEFENDANTS BROWN & WILLIAMSON TOBACCO
CORPORATION, THE AMERICAN TOBACCO COMPANY, AND
BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED**

Pursuant to the Ninth Case Management Order dated March 26, 2001 ("CMO9"), Defendant Brown & Williamson Tobacco Corporation, individually and as successor by merger to The American Tobacco Company ("Brown & Williamson"), responds and objects to the Plaintiff United States of America's ("Plaintiff") Specific Interrogatories to Defendants Brown & Williamson Tobacco Corporation, The American Tobacco Company, and British American Tobacco (Investments), Limited (the "Specific Interrogatories").

Plaintiff incorrectly lists The American Tobacco Company as a separate defendant in the Specific Interrogatories. In addition, the Amended Complaint lists as defendants both "Brown & Williamson Tobacco Corporation, directly and as successor by merger to American Tobacco Company" and "American Tobacco Company, directly and as successor to the tobacco interests of American Brands, Inc." The Amended Complaint is confusing because it twice lists The American Tobacco Company as a defendant, which, as the Plaintiff knows, no longer exists as a

By way of further response, Brown & Williamson states that documents containing information that may be responsive to this Interrogatory have been produced to Plaintiff in response to Comprehensive Request Number 310, among others. Because the burden of deriving or ascertaining information contained in these documents is substantially the same for Plaintiff as it would be for Brown & Williamson, Brown & Williamson refers Plaintiff to these documents pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

INTERROGATORY NO. 22:

For the years 1950 to the present, describe your position with respect to whether ETS causes disease, including any changes in that position over time, identify all company research or studies relating to such position, and identify employees meaningfully involved with such position or change in position.

RESPONSE TO INTERROGATORY NO. 22:

Brown & Williamson incorporates Recurring Objections Numbers 1, 3, 6, 9, 13, 15, and 17 in response to this Interrogatory. Brown & Williamson specifically objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Additionally, Brown & Williamson specifically objects to this Interrogatory to the extent it purports to require Brown & Williamson to identify "employees meaningfully involved" in the referenced subject matter on the grounds that this phrase is vague, ambiguous, and undefined in that it could include scores of current and former Brown & Williamson employees.

Subject to and without waiving its Recurring and Specific Objections, Brown & Williamson states that Nick Brookes will be able to provide information about Brown & Williamson's role as a manufacturer and its responses to issues of smoking and health, including Brown & Williamson's position with respect to environmental tobacco smoke ("ETS"). In addition, Brown & Williamson states that Dr. Scott Appleton and Dr. Sharon Blackie are current

and former Brown & Williamson employees with knowledge of the subject matter of this Interrogatory.

Further, Brown & Williamson states that it does not believe that the scientific evidence, taken as a whole, is sufficient to establish that ETS is a cause of lung cancer, heart disease or chronic obstructive pulmonary disease.

Most of the evidence investigating whether there is an increased risk of disease associated with exposure to ETS is based on epidemiological studies. The majority of studies on ETS and lung cancer and heart disease have not reported overall statistically significant increases in risk. In those studies which have reported a statistically significant association between exposure to ETS and lung cancer and heart disease, the reported risks are sufficiently low that they cannot be assumed to be reliable by normal scientific standards in judging epidemiological studies.

The area in which the epidemiological studies do consistently report a statistically significant, albeit small, association is for those that report an increase in respiratory symptoms and illnesses in the very young children of parents who smoke compared to those whose parents do not smoke. It is not clear whether these associations are a result of exposure to tobacco smoke in the air, or a result of the many other reported differences between smoking and nonsmoking households.

Unlike the results for younger children, however, the increased incidence of respiratory symptoms and illnesses is not consistently reported in studies of older children. In these studies it has not been consistently possible to medically distinguish between the children of smokers and children of nonsmokers at the age of three and above.

In spite of the uncertainty about whether the effects reported in young children represent a real effect of exposure to ETS, Brown & Williamson believes that parents should not smoke around young children.

Levels of ETS constituents are too low to support a conclusion that ETS is a cause of chronic disease in adults. Estimated exposures to such constituents resulting from ETS are well below comparable exposure standards and doses producing adverse effects in animal toxicity studies. This raises a number of plausibility issues in relation to the minority of studies that have reported risks in studies of ETS. In some of the studies that have reported a statistically significant increase in risk of heart disease in people exposed to ETS, the reported risks have been higher than those reported in studies of active smoking. Given that active smokers are exposed to smoke from both active smoking and ETS, it is Brown & Williamson's view that no logical or plausible explanation exists for such a finding.

By way of further response, Brown & Williamson states that documents containing information that may be responsive to this Interrogatory have been produced to Plaintiff in response to Comprehensive Request Numbers 80, 81, 92, 110, 262, 263, 350, 425, 435, and Second Request Number 502, among others. Because the burden of deriving or ascertaining information contained in these documents is substantially the same for Plaintiff as it would be for Brown & Williamson, Brown & Williamson refers Plaintiff to these documents pursuant to Rule 33(d) of the Federal Rules of Civil Procedure.

INTERROGATORY NO. 23:

For the years 1950 to the present, describe your position with respect to whether smoking and/or nicotine is addictive, including any changes in that position over time, identify all company research or studies relating to such position, and identify employees meaningfully involved with such position or change in position.